

02-22647

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-33099-GFK  
Chapter 7

Guy Mildon,

Debtor(s)

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NOTICE OF HEARING AND MOTION  
FOR RELIEF FROM STAY

TO: The Debtor(s) and other entities specified in Local Rule 9013-3(a).

1. Mortgage Electronic Registration Systems, Inc., by Midfirst Bank, its authorized servicer, moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 10:30 a.m., on September 13, 2004, in Courtroom No. 228B, at the United States Courthouse, at 316 N. Robert St., in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered no later than September 8, 2004 which is three days before the time set for the hearing(excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than September 1, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, or holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on May 24, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. By mortgage dated April 30, 1997, in the original principal amount of \$109,458.00 (the "Mortgage"), which mortgage was subsequently assigned by Document No. 1622982, Movant acquired a first mortgagee's interest in the following real property (the "Property"), to-wit:

Lot 9, Block 1, Frankson's Garden Plateau, except the south 228.45 feet thereof. The North 30 feet of said lot to be forever used as a public road and right-of-way.

The Mortgage was registered in the offices of the Registrar of Titles, for Ramsey County, Minnesota on August 18, 1997, as Document No. 1161765. A copy of the Mortgage and assignments are attached hereto as Exhibit A.

Midfirst Bank is the servicer for said note and mortgage and is authorized to act on behalf of Movant.

7. The last payment received from Debtors was applied to the January, 2003 payment as that was the next payment due. Debtor(s) is delinquent under the terms of the note secured by the Mortgage with respect to monthly payments due as follows:

18 payments @ \$1,057.89	\$19,042.02
Accrued late charges	676.96
Advances	17.04
Admin. Fees	87.50
Foreclosure fees and costs	1,344.33
Attorneys Fees & Cost	<u>900.00</u>
TOTAL	\$22,067.85

The outstanding principal balance due Movant under the terms of the note is \$103,438.20 as of June 15, 2004, and interest accrues at the rate of 8.375% per diem per day. On information and belief, the Property is also encumbered by a second mortgage in favor of Ocwen Federal Bank in the approximate amount of \$35,000.00. The amount therefore due and owing on said note is as follows:

Principal	\$103,438.20
Late charges	676.96
Advances	104.54
Interest to 07/31/04	13,715.94
Attorneys Fees & Costs	<u>2,244.33</u>
TOTAL	\$120,179.97

The fair market value of the Property as averred by the debtor is approximately \$180,000.00.

8. In view of the fact that this is a Chapter 7 liquidation proceeding, the Property is not necessary for an effective reorganization. Moreover, Debtor(s) failure to make payments to Movant when due, or otherwise provide Movant with adequate protection of its interest in the Property constitutes cause, within the meaning of 11 U.S.C. Sec. 362(d)(1), entitling Movant to relief from the automatic stay.

9. If testimony is necessary as to any facts relevant to this motion, Nancy A. Nordmeyer, 7300 Metro Boulevard #390, Edina, MN, will testify on behalf of Movant.

10. This is an attempt to collect a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

WHEREFORE, Movant, respectfully moves the Court for an Order modifying the automatic stay of Sec. 362(a) so as to permit Movant to foreclose its Mortgage on the Property and for such other relief as may be just and equitable.

Dated: 8-20-04

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

#### VERIFICATION

I, Christina Brunson, the Bankruptcy Administrator for Mortgage Electronic Registration Systems, Inc., by Midfirst Bank, its authorized servicer, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: 8-4-04

Signed: Christina Brunson

Mortgage Electronic Registration Systems, Inc.

c/o Midfirst Bank  
999 NW Grand Blvd.  
STE 100  
Oklahoma City, OK 73118-6077

1161765

AFTER RECORDING MAIL TO:  
 Old Kent Mortgage Company  
 Secondary Marketing Operations  
 Final Documentation MN 55425  
 P.O. Box 204  
 Grand Rapids, Michigan 49501-0204

Code #	2500
Title Co.	04
Typist	
Tract Index	
Recorder	
Fee	1450
Copy	200

LOAN NO. 0921879

[Space Above This Line For Recording Data]

STATE OF MINNESOTA

FHA MORTGAGE

CT# 387146 BK 821 PG 146

STATE OF MINNESOTA SS  
 DEPT. OF THE REGISTRAR OF TITLES  
 I hereby certify that the within  
 instrument was filed in this office at  
 97 at 9 o'clock A.M. 18 Aug

Registrar of Titles  
*K. Lemon*

FHA CASE NO. Deputy  
 271:7589790/703

This Mortgage ("Security Instrument") is given on April 30, 1997. The Mortgagor is  
 KELLY LYNN MILDON and GUY M MILDON, WIFE AND HUSBAND

whose address is 928 BURKE AVENUE WEST, ROSEVILLE, MN 55113  
 ("Borrower"). This Security Instrument is given to  
 MORTGAGE ONE, INC.

which is organized and existing under the laws of THE UNITED STATES OF AMERICA, and whose address is  
 2850 METRO DRIVE SUITE 304, BLOOMINGTON, MN 55425

("Lender"). Borrower owes Lender the principal sum of One Hundred Nine Thousand Four  
 Hundred Fifty Eight Dollars and no/100  
 Dollars (U.S. \$ 109,458.00).

This debt is evidenced by Borrower's note dated the same date as this  
 Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and  
 payable on May 1, 2027. This Security Instrument secures to Lender: (a) the repayment of the debt  
 evidenced by the Note, with interest, and all renewals, extensions and modifications; (b) the payment of all other sums,  
 with interest, advanced under Paragraph 6 to protect the security of this Security Instrument; and (c) the performance of  
 Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does  
 hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in  
 Ramsey County, Minnesota:

Lot 9, Block 1, Frankson's Garden Plateau, except the  
 South 228.45 feet thereof. The North 30 feet of said  
 lot to be forever used as a public road and right-of-way.

06/06/97 01:15PM 11205 2C5HR 2  
 MT# 251.85

AGRICULTURAL CONSERVATION

FEE PAID

RAMSEY COUNTY



which has the address of 928 BURKE AVENUE WEST  
 Minnesota 55113 (Street)  
 ("Property Address")  
 [Zip Code]

ROSEVILLE  
 [City]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights,  
 appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or  
 hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of  
 the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to  
 mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record.  
 Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any  
 encumbrances of record.

1161766

(3)

Prepared by:

Mortgage One, Inc.  
2850 Metro Drive #304  
Bloomington, MN  
55425

And when recorded mail to:

Old Kent Mortgage Company  
Secondary Marketing Operations  
Final Documentation  
P.O. Box 204  
Grand Rapids, MI 49501-0204

LOAN #

Code #	0270
Title #	CR
Tyrust	
Tract Index	
Register	
Fee	1000
Copy	200

ST 387146 BK 821 PG 146  
STATE OF MINNESOTA SS  
COUNTY OF RAMSEY  
OFFICE OF THE REGISTRAR OF FILES  
This is to certify that the within  
instrument was filed in this office at  
St. Paul, Minn. on the 18 day of Aug  
1997 at 9 o'clock A.M.  
By K. Lemons  
Deputy

### Corporation Assignment of Real Estate Mortgage

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to **OLD KENT MORTGAGE COMPANY, ITS SUCCESSORS AND ASSIGNS** all the rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated **APRIL 30, 1997**, executed by **KELLY LYNN & GUY M**

MILDON WIFE & HUSBAND  
to **MORTGAGE ONE, INC.**

organized under the laws of **THE STATE OF MINNESOTA**  
**2850 METRO DRIVE, SUITE 304, BLOOMINGTON MN 55425**

and recorded in Liber  
State of **MINNESOTA**

SEE ATTACHED LEGAL

a corporation  
and whose principal place of business is

**RAMSEY** County Records.  
described hereinafter as follows:

PIN 14-29-23-21-0022

COMMONLY KNOWN AS: 928 BURKE AVENUE WEST, ROSEVILLE, MN 55113

TOGETHER with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Real Estate Mortgage.

STATE OF **MINNESOTA**  
COUNTY OF **HENNEPIN**

On **APRIL 30, 1997**

the undersigned, a Notary Public in and for said County and State,  
personally appeared **MARK R MUCK**  
known to me to be the **PRESIDENT**

**Janet M Smith**  
Witness

of the corporation herein which  
executed the within instrument, that he was affixed to said instrument  
is the corporate seal of said corporation; that said instrument was signed  
and sealed on behalf of said corporation pursuant to its by-laws or  
a resolution of its Board of Directors and that he/she acknowledges  
said instrument to be the free act and deed of said corporation.

Notary Public

My Commission Expires

**Theresa A Houts**  
RETURN TO  
PRESIDENT TITLE CLOSERS, INC.  
35 So. Lake Street, Suite 600  
P.O. Box 8  
Big Lake, MN 55309  
File No. **PT-20007-97A**

Mortgage One, Inc.

By: **MARK R Muck**Its: **PRESIDENT**

By:

Its:

Witness

**Janet M Smith**  
Janet M Smith



162

1622982

387146-Rev.  
Registrar of Titles, Ramsey, MN  
Date Filed: 1/8/01 2:00 PM  
As Doc #: 1622982  
On CT # (s):  
387146,

**MINNESOTA**

LOAN NO. 112262241 (0921879) (0921879 GMA)  
POOL NO. 00441827SF  
COUNTY OF RAMSEY (a)

PREPARED BY AND  
WHEN RECORDED MAIL TO:  
Security Connections, Inc.  
620 S. Woodruff Ave.  
ATTN: KARLEEN PARKER  
Idaho Falls, ID 83401

**ASSIGNMENT OF REAL ESTATE**

KNOW ALL MEN BY THESE PRESENTS THAT THE KENT MORTGAGE COMPANY, A MICHIGAN CORPORATION

located at 4420 44TH ST. STE SUITE#B, GRAND RAPIDS, MI 49512  
party of the first part, has granted, bargained, sold assigned,  
transferred and set over unto MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., A  
DELAWARE CORPORATION  
located at P.O. BOX 2026, FLINT, MI 48501  
party of the second part, its successors and assigns, a certain indenture  
of mortgage dated 30th day of APRIL A.D. 1997,  
made by KELLY LYNN MILDON AND GUY M MILDON, WIFE AND HUSBAND

to it securing the payment of one promissory note therein described for  
the sum of ONE HUNDRED NINE THOUSAND FOUR HUNDRED FIFTY- EIGHT and NO/100----- dollars  
(\$109,458.00) and all its right, title and interest in  
and to the premises situated in County of RAMSEY State of  
Minnesota.

TCT #.387146



Assignment- Interv.-Recorded



Loan No.

MIN# 100010980002735461 MERS VRU PHONE #: 1-888-679-6377  
J=OK832.S.09777

(NMRI.MN)

Page 1 of 2

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-33099-GFK  
Chapter 7

Guy Mildon,

Debtor(s)

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MEMORANDUM OF LAW

Mortgage Electronic Registration Systems, Inc., by Midfirst Bank, its authorized servicer ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) was delinquent in respect of payments due under the note and mortgage. Since this case was filed Debtor(s) has made no payments to Movant and as of this date thereof are in arrears in the total amount of \$22,067.85.

ARGUMENT

Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case has failed to make the payments required by the note and mortgage for a period of more than 17 months. Debtor(s) has not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

In the present case the balance due Movant on the note and mortgage is \$120,179.97. [The property is encumbered by a second mortgage in favor of Ocwen Federal Bank in the approximate amount of \$35,000.00].

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 8.22.01.

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

By /e/ Nancy A. Nordmeyer  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #320  
Edina, MN 55439-2306  
(952) 831-4060



SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA       )  
                                      ) SS  
COUNTY OF HENNEPIN       )

I, **Stephanie Pilegaard** says that on August 23, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

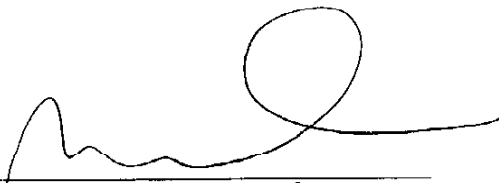
Guy Mildon  
928 Burke Ave West  
Roseville, MN 55113-6415

Curtis Walker, Esq.  
4356 Nicollet Avenue South  
Minneapolis, MN 55409

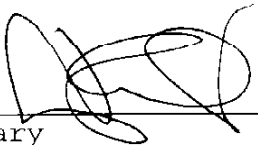
John A. Hedback, Esq.  
2855 Anthony Lane S., STE 201  
St. Anthony, MN 55418

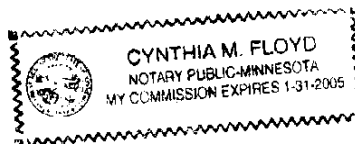
U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th St.  
Minneapolis, MN 55415

Ocwen Federal Bank  
Attn Bankruptcy Dept.  
12650 Ingenuity Drive  
Orlando, FL 32826

  
\_\_\_\_\_  
Stephanie Pilegaard

Subscribed and sworn to before me August 23, 2004.

  
\_\_\_\_\_  
Notary



02-22647  
46911818

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-33099-GFK

Guy Mildon,

Debtor(s)

---

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on September 13, 2004.

**THIS CAUSE** coming to be heard on the motion of Mortgage Electronic Registration Systems, Inc., by Midfirst Bank, its authorized servicer, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

**IT IS HEREBY ORDERED**, that the automatic stay heretofore entered in this case is modified to the extent necessary to allow Mortgage Electronic Registration Systems, Inc., by Midfirst Bank, its authorized servicer, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

Lot 9, Block 1, Frankson's Garden Plateau, except the south 228.45 feet thereof. The North 30 feet of said lot to be forever used as a public road and right-of-way, Ramsey County, Minnesota.

**NOTWITHSTANDING** Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
United States Bankruptcy Judge